IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.95 OF 2007
IN
COMPANY PETITION NO.901 OF 2004

Donyi Polo Petrochemicals
Ltd., having their registered
office at 512, Vyapar Bhavan,
49, P.D'Mello Road, Carnac
Bunder, Bombay-400 009. .... Appellant

- Versus -

Lee & Muirhead Limited,
a Company incorporated under
the provisions of the
Companies Act, 1956, having
their registered office at
12, K. Dubash Marg,
Bombay-400 023. .... Respondent

Shri Jagdeep Trivedi i/b M/s. Jurists Uno
for the Appellant.

Sarvasri V.R. Dhond with Madhur Rai i/b
M/s. Negandhi, Shah & Himayatullah for
the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: FEBRUARY 12, 2007

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Admit. By consent, heard forthwith.

2. By the present appeal, the appellant challenges the order dated 25-1-2007 passed by the Company Judge while disposing the petition in exercise of power under Section 443 of the Companies Act, 1956. The contention

of the appellant is that the amount which was deposited in Summary Suit No.1076 of 2004 could not have been allowed to be withdrawn by the Company Judge in the proceedings under the Companies Act.

3. It is not necessary to go into the rival contentions sought to be raised in this regard, suffice to observe that since the amount was directed to be deposited in Summary Suit No.1076 of 2004, it would have been appropriate for the respondent to approach the Court in the said summary suit in case the respondent is desirous of withdrawing the amount rather than inviting an order by the Company Judge. In this view of the matter, the appeal is allowed and the impugned order is set aside with liberty to the respondent to seek withdrawal of the said amount in Summary Suit No.1076 of 2004 by appropriate application. With the said liberty to the respondent, the impugned order is set aside with no order as to costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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